

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Delisting of *Astragalus perianus* (Rydberg milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to remove *Astragalus perianus* (Rydberg milk-vetch) from the List of Endangered and Threatened Plants. This action is based on a review of all available data, which indicate that the species should no longer be classified as threatened. When the species was federally listed in 1978 it was known only from two populations. One population existed at the type locality in Bullion Canyon, Piute County, Utah, and another population occurred on top of Mt. Dutton in Garfield County, Utah. Extensive studies have been conducted for the last 9 years resulting in the discovery of ten additional populations.

DATES: Comments from all interested parties must be received by December 12, 1988. Public hearing requests must be received by November 25, 1988.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, Fish and Wildlife Enhancement, 1745 West 1700 South, Salt Lake City, Utah 84104. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England, botanist, at the above address (801/524-4430 or FTS 588-4430).

SUPPLEMENTARY INFORMATION:

Background

Rydberg and Carlton were the first to collect this milk-vetch during 1905 in the

Tushar Mountains west of Marysvale, Piute County, Utah. Their collection remained obscure until 1964 when Rupert Barneby used this collection as the type specimen in describing *Astragalus perianus* as a new species (Barneby 1964).

Numerous attempts were made to relocate this species in the Tushar Mountains. In 1976, specimens were collected and positively identified as *A. perianus*. Prior to this collection the species was thought to be extinct at the type locality. In June 1975, Welsh and Murdock discovered the species at the top of Mount Dutton on the Sevier Plateau, Garfield County, Utah. The species was federally listed as threatened in 1978 by the Service (43 FR 17910).

In 1981 Rupert Barneby reevaluated the specimens of *A. perianus* and a species it closely resembles, *A. serpens*, at Brigham Young University and identified a series of collections previously identified as *A. serpens* to be *A. perianus*. These collections, made in Kane, Iron, and Piute Counties from 1967 to 1977, greatly expanded the distribution of *A. perianus*.

In 1982 the U.S. Forest Service developed a management plan for *A. perianus* (U.S. Forest Service 1982). In August 1983 this plan was approved and implemented. As a consequence of this management plan, inventories were intensified and monitoring studies were established to determine use, condition and trends for the species and its habitat. From 1984 through 1987 the majority of potential habitat was inventoried. Twelve major population centers were located and mapped. These populations cover over 2,000 acres in six counties on six major mountains and plateaus in south-central Utah: the Tushar Mountains, Sevier Plateau, Markagunt Plateau, Fish Lake Plateau, Mount Dutton, and Thousand Lake Mountain.

The majority of habitat of *A. perianus* occurs on Federal lands administered by the Dixie and Fishlake National Forests. The remaining habitat occurs on private lands. Conservative estimates for the 12 populations indicate population numbers at well over 75,000 (Atwood

1987), and probably closer to 200,000 individuals (J.L. England pers. obs). All age classes are represented in all of the 12 populations. All populations are healthy with most having adequate protection from potential threats.

Summary of Factors Affecting the Species

50 CFR 424.11 requires that certain factors be considered before a species can be listed, reclassified, or delisted. These factors and their application to *Astragalus perianus* Barneby (Rydberg milk-vetch) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range.

Mining and road construction remain as localized threats to small portions of the species' overall population, but because of the increase in the number and range of known populations, they no longer constitute a significant threat to *A. perianus*.

B. Overutilization for commercial, recreational, scientific, or educational purposes. *A. perianus* is not collected for commercial purposes and the other factors have not and are not expected to impact the species' viability.

C. Disease or predation. All populations are healthy and viable with little or no disease or predation. The numbers of wildlife and livestock have decreased since 1950 with subsequent improvement in the overall vegetative condition of the species habitat. No evidence of livestock or wildlife use was observed over the last 9 years of study.

The recent introduction of mountain goats (*Oreamnos americanus*) into the Tushar mountains may pose a latent threat to that population. The Service, however, concurred with the "no effect" conclusion in the biological assessment the Forest Service prepared for the introduction of mountain goats in 1985. This concurrence was based in large part on the Forest Service's determination that the transplanted herd would not intrude into the occupied habitat of *A. perianus*. In any event a significant impact on that one population would not affect the overall status of the species.

D. The inadequacy of existing regulatory mechanisms. The U.S. Forest Service Manual (Section 2670) requires protection and maintenance of viable populations of rare species which may be sensitive of environmental degradation. Since the majority of habitat for the Rydberg milk-vetch occurs on Federal lands administered by the U.S. Forest Service, administrative mechanisms exist to protect the species.

E. Other natural or manmade factors affecting its continued existence. No other natural or manmade factors affecting *A. perianus* are known.

The regulations at 50 CFR 424.011(d) state that a species may be delisted if: (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error. Item (1) does not apply in this case, but in regard to items (2) and (3), 10 additional populations have been discovered, indicating that the original classification data were in error. The new discoveries have increased population numbers to well over 75,000 and probably closer to 200,000 individuals. The Rydberg milk-vetch is no longer in danger of becoming endangered, thus it should be delisted from threatened status.

Effect of Rule

The proposed action would result in the removal of this species from the list of Endangered and Threatened Plants. Federal agencies would no longer be required to consult with the Secretary of the Interior to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of the Rydberg milk-vetch. There is no designated critical habitat for this species. Federal regulations and status on taking this species would no longer apply. The Forest Service should maintain the species on their Sensitive Species List and provide protection under the Forest Service administrative manual requirements to ensure the continued viability of the species.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions regarding any aspect of this proposal are hereby solicited from the public, other concerned governmental agencies, the scientific community, industry, or other interested parties.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the

authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (49 FR 49244).

References Cited

- Atwood, N.D. 1987. Rydberg milkvetch, *Astragalus perianus* Barneby. Technical Report, U.S. Forest Service, Ogden, Utah. 18pp.
- Barneby, R.C. 1964. Atlas of North American *Astragalus*. Memoirs of the New York Botanical Garden. 13(II):597-1188.
- U.S. Forest Service. 1982. Management plan for *Astragalus perianus*. U.S. Forest Service Typed Document, Ogden, Utah. 49 pp.

Author

The author of this proposed rule is John L. England, Botanist, U.S. Fish and Wildlife Service (see address section above). Dr. N. Duane Atwood, Regional Botanist, USDA Forest Service, Intermountain Region, Ogden, Utah 84401, (801) 625-5599 or FTS 586-5599 provided substantial information.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (Agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.12(h) by removing the entry "*Astragalus perianus* Rydberg milk-vetch * * *" under Fabaceae from the List of Endangered and Threatened Plants.

Dated: September 26, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 88-23259 Filed 10-7-88; 8:45 am]

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National Oceanic and Atmospheric Administration

50 CFR Part 651

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice the New England Fishery Management Council (Council) has submitted Amendment #2 (Amendment) to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) for review by the Secretary of Commerce. Comments are invited from the public on the Amendment and any other documents made available.

DATE: Comments will be accepted until December 5, 1988.

ADDRESS: Send comments to Richard B. Roe, Regional Director, National Marine Fisheries Service, 14 Elm Street, Gloucester, MA 01930. Clearly mark the outside of the envelope "Comments on Amendment #2 to the Northeast Multispecies FMP." Copies of the Amendment, Environmental Assessment, and Regulatory Impact Review/Initial Regulatory Flexibility analysis are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Northeast Multispecies Plan Coordinator, (508) 281-3600, extension 252.

SUPPLEMENTARY INFORMATION: This amendment was prepared under the provisions of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). This amendment proposes measures for the managing the multispecies finfish fisheries in the Northwest Atlantic.

The most significant problem addressed in this amendment is that of non-compliance. Although the Council believes that its fundamental management strategy remains sound, it has become evident that the intent of some of the management measures in the FMP are being compromised by specifications that are too easily circumvented. Six of the nine proposed measures are explicitly designed to enhance compliance with the basic measures of the FMP. The other three proposed measures are intended to enhance the ability of some of the

existing management measures to achieve their purpose.

The proposed measures of this Amendment are: (1) Increase the minimum size of yellowtail flounder from 12 inches to 13 inches and American plaice from 12 inches to 14 inches; (2) postpone indefinitely the scheduled increase in the FMP of regulated mesh (to 6 inches) in the Georges Bank portion of the Regulated Mesh Area (RMA), but effective January 1, 1990, require that vessels operating in the RMA (which are not otherwise exempt) use nets that are constructed with mesh no smaller than the regulated size throughout; (3) modify the regulatory language at § 651.20(f) that defines nets "not available for immediate use" to include only (a) nets

that are stored below deck, (b) nets that are stowed and lashed down on deck, and (c) nets that are secured in a manner that significantly limits the chances of small mesh being used in the RMA, as approved by the NMFS Regional Director; (4) adopt regulatory language to facilitate non-reissuance of an Exempted Fishery Program permit when the participant has not complied with the reporting requirements; (5) establish a trip by-catch limit of 25 percent regulated species for vessels operating in the Exempted Fishery Program; (6) prohibit trawl vessels from entering Area II during the period of seasonal closure; (7) establish a minimum fish size for redfish at 9 inches; (8) require that all regulated minimum fish sizes shall apply to both

commercial and recreational fishermen; and (9) extend mesh regulations established for the RMA into the Nantucket Shoals area to protect juvenile cod in the winter fishery, December 1 through March 31.

The receipt date for this amendment is October 4, 1988, and proposed regulations for this amendment are expected to be published 15 years later.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 5, 1988.

Joe P. Clem,

*Acting Director of Office Fisheries,
Conservation and Management, National
Marine Fisheries Service.*

[FR Doc. 88-23402 Filed 10-5-88; 4:53 pm]

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